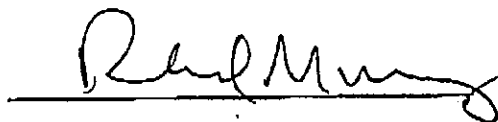


**An Analysis of Racial and Ethnic Discrimination in Texas,
Racial Polarization, and the Voting Rights Act with
Regard to Redistricting Plan H283**

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A handwritten signature in black ink, appearing to read "Richard Murray", is written over a horizontal line.

I. Racial and Ethnic Discrimination in Texas Elections and the Continuing Need for the State to Be Covered by the Special Provisions of the Voting Rights Act

A. Barbara Jordan Leads the Fight to Bring Texas under Section Five of the Voting Rights Act

When Congresswoman Barbara Jordan returned to Washington, D.C. in January 1975 to begin her second term in the United States House of Representatives, her top priority was to ensure that the second reauthorization of the Voting Rights Act would include extending the special provisions of the Voting Rights Act to Texas.¹ Jordan, whose eloquence and passion during the 1973 House Judiciary Committee hearings on Watergate had brought her considerable national acclaim, also supported expanding the Voting Rights Act to language minorities – a provision of great consequence for Texas with its large and fast-growing Latino population.

Barbara Jordan knew a lot about the electoral problems Blacks and Hispanics had experienced throughout the state's history. That knowledge was rooted in her own personal experience in Houston, Texas. When the young attorney returned to her hometown after finishing law school in Boston, she ran for a seat in the Texas House of Representatives in the 1962 Democratic Primary, then the effective election in the Lone Star State. She rolled up huge majorities in the north side neighborhood where she had grown up,² but was handily defeated because the 12 Texas House seats in Harris County were all filled in an *at-large place* election – one of the many devices the state's elected officials utilized to make sure the political process was dominated by non-Hispanic Whites (usually called “Anglos” in Texas). So while Barbara Jordan could amass 46,363 total votes, that was far less than the 66,353 votes received by Willis Whatley, her Anglo opponent for Position 10 on the county-wide ballot. Whatley won every white precinct in the county – often by margins exceeding 90% – save for one box in Deer Park, where a bitter strike at the Shell Oil refinery apparently led enough union members to break ranks and vote for the Black candidate endorsed by the AFL-CIO. When Barbara Jordan ran again for the Texas House in 1964, she was again defeated by Willis Whatley, and this time she lost every white voting precinct in the county (the Deer Park strike had been settled).

The Congresswoman's personal experience was part of a long-standing discriminatory pattern dating from the Anglo settlement of Texas in the 1820s and 1830s. Prominent among the 10,000 or so early white settlers were slave owners eager to exploit the rich river bottoms in the eastern part of the then Mexican territory. Mexico had outlawed slavery after securing its independence from Spain, a fact that fueled growing tensions with the growing number of Anglos moving to Texas. When those tensions led to an open rupture and Texas independence in 1836, the new nation immediately approved slavery and encouraged planters in the adjoining “Cotton Kingdom” states to emigrate to the sparsely eastern quarter where

¹ The 1965 Voting Rights Act applied the Special Provisions of Section Five, which included preclearance of all electoral changes in covered states or areas before such could take affect, to all of six southern states -Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, and part of North Carolina. Texas was not included under the original act because it did not have a literacy test for voting.

² In Houston's Fifth Ward northeast of downtown, Ms. Jordan got 583 of 594 votes (98.1%) in Precinct 47, 529 of 531 votes (99.6%) in Precinct 48, and 607 of 610 votes (99.5%) in Precinct 157. (Source: Office of the Harris County Clerk).

plantation agriculture could yield huge profits for slave owners. This effort was quite successful. Just after independence, estimates put the Republic of Texas' white population at about 30,000, compared to 5,000 African American slaves. By 1847, when a census of the newly admitted American state was taken, the white population had more than tripled to 102,961 (including an estimated 12,000 to 14,000 persons of Mexican descent), but the black population had increased seven-fold to 39,048 of whom 38,753 were slaves and 295 free persons.³ By 1860, the slave population had soared to 182,566 and cotton production totaled 420,000 bales.

Given the state's huge dependence on slave labor, it is not surprised that the white male voters of Texas voted 46,129 to 14,697 to join six other Deep South states in leaving the union in the wake of Republican Abraham Lincoln's victory in the November 1860 presidential election. The military failure of the Confederacy forced Texas back into the union, but while Anglo Texans reluctantly accepted that fact, and the accompanying abolishment of slavery, there was adamant opposition to extending meaningful political rights to the freed blacks.

T. R. Fehrenbach, a noted conservative historian of the state, summed up the post-Civil War mindset of Anglo Texans thusly:

There was complete agreement in Texas that slavery was dead. *But it was politically impossible for Texans to consider giving the freedmen full citizen rights.* (My emphasis) The remembrance of slavery was one factor, but the actual class status of the blacks was equally, or more important. The horde of Negroes. Through no fault of their own, were impoverished, illiterate, and unskilled. They were a bottom group, the lowest of the low, who had never participated in society or government. If Dr. W. E. B. DuBois later wrote that in 1861 not one white American in a hundred believed that Negroes could ever become an integral part of American democracy, the percentage in Texas was probably just as high in 1866.⁴

That being the reality, the political and electoral rights of blacks in Texas after the Civil War were only secured by direct congressional action backed by occupying federal troops. According to Fehrenbach, it was this hated Reconstruction forced on conquered white Texans from 1866 to 1875 that would leave them bitterly resentful for generations and determined to reassert their prewar political dominance once they had the opportunity. That opportunity gradually emerged with the withdrawal of federal troops from the South as part of the political deal that resolved the disputed 1876 presidential election, but it was held in check in the 1880s and 1890s by black voters' ability to form a fairly effective populist coalitions with poor whites in supporting candidates backed by the Greenback Party and the Farmers Alliance in the 1880s and the People's Party nominees in the 1890s. This black-poor white populist coalition reached its peak in 1896, when their gubernatorial candidate officially received 44 percent of the vote, although Chandler Davidson concludes that "in the absence of voter fraud that year, the figure would have probably exceeded the 50 percent mark."⁵

³ These numbers are from *Lone Star Politics: Tradition and Transformation in Texas*, 2nd ed., by Ken Collier, Steven Galatas, and Julie Harrelson-Stephens, (Washington, D.C., CQ Press, 2012), p. 12.

⁴ T. R. Fehrenbach, *Lone Star: A History of Texas and the Texans*, (New York, Macmillan, 1968), p. 398.

⁵ Chandler Davidson, *Race and Class in Texas Politics*, (Princeton, N.J.: Princeton University Press, 1990), p. 20.

The near defeat of the white, conservative dominated, Texas Democratic Party by a coalition that included many black voters led to a major effort at the end of the 19th century and beginning of the 20th century to eliminate the threat posed by a biracial populist coalition. The remedy was to enact some of the toughest anti-minority election laws in the United States. The principal engineer of these repressive measures was Alexander Watkins Terrell, a former slaveholder and Confederate officer who had married the daughter of a Texas plantation owner. Terrell, who served off-and-on in the Texas Legislature from 1876 to 1906 characterized the Fifteenth Amendment prohibiting the denial of black voting rights as “the political blunder of the century.”⁶

Terrell was a fierce advocate of a “poll tax,” not only because it would get rid of many black voters, but also because it would also eliminate “the thriftless, idle, and semi-vagrant element of both races.”⁷ In fact, by the time the poll tax came up for a vote in a 1902 referendum, most blacks had already been pushed out of the electorate by a combination of intimidation and physical violence in addition to restrictive electoral practices. The net result of these was to virtually totally disenfranchise African Americans in Texas by 1910, as well as greatly reduce the number of poor whites registering and voting. It should also be noted that these restrictive practices being adopted in Austin also worked to deny the growing Mexican American majorities in South Texas any effective political power in their home counties.⁸ That was not accidental. Terrell, according to Evan Anders, had “a racist distrust of black *and* Mexican American participation in politics.”⁹

Although the black and Mexican American vote was small in Texas after 1900, it continued to stir controversy and produce periodic efforts by conservative Anglos to make it even less of a factor. Typical was the reaction after a prohibitionist amendment to the Texas Constitution failed in 1911 by a margin of 6,297 votes out of 468,000 total ballots. Thomas Ball, the state chairman of the temperance campaign, blamed its defeat on “the poor, ignorant negroes, deluded by designing white men, inspired by the liquor interests, and the Mexican vote, which Texas in 1836 declared unfit to govern this country.”¹⁰

The hostility toward minority voter interests in Texas thus continued to manifest itself in the 20th century. For example, in 1923 Texas formally adopted a white primary law legally excluding blacks from voting in the critical Democratic Party Primaries – this was overkill, since the other legal rules, informal threats, and racial violence of the time had already

⁶ Ibid., p. 21.

⁷ Ibid.,

⁸ The Texas poll tax was particularly effective in keeping poor voters off the rolls not just because of its cost (typically \$1.75 per year – which might approximate \$50 in 2011 dollars compared to 1920) but also because it had to be paid annually *in advance* months before the crucial Democratic primaries and nearly a year before the November General Elections. And by setting the enrollment period in December, low income voters were forced to choose between holiday spending for their families, and investing in an election long before the candidates or issues had been defined.

The effect of the poll tax in South Texas not only greatly lowered overall voting levels, but was also a key element in boss rule and machine politics in the region because most Mexican Americans on the voter rolls had their tax paid by Anglo politicians like Jim Wells or George Parr who then literally rounded up these voters on election days and instructed them for whom to cast their ballots. See Evan Anders, *Boss Rule in South Texas*, (Austin, University of Texas Press, 1979).

⁹ Anders, *ibid.*, p. 91.

¹⁰ *Dallas Morning News*, July 30, 1911.

effectively eliminated any meaningful African American primary presence. Apparently, the Texas Legislature just wanted to make it very clear that Lone Star politics was a white man's affair, not to be disturbed by their lesser fellow residents. The state continued to defend the exclusory primary in the face of a series of successful court challenges until the definitive 1944 U.S. Supreme Court decision, *Smith v. Allwright* struck down this practice.¹¹

The success of these anti-minority electoral practices is evident in election data from the 1950s and 1960s. Table 1 compares the percent of the potential Texas electorate voting in the presidential elections from 1952 to 1964. Even in the later year when a native Texan, President Lyndon B. Johnson was on the ballot, the state vote was far below the national level.

**Table 1: Voter Turnout in Presidential Elections in Texas
Compared to the United States: 1952 to 1964**

Year	Turnout as a % of Voting Age Population in Texas	Turnout as a % of Voting Age Population in U.S.
1952	42.8	62.0
1956	38.1	60.1
1960	41.8	63.8
1964	45.4	63.0

Source: Adapted from Clifton McCleskey, *The Government and Politics of Texas*, (Boston: Little, Brown, 1969), p. 38.

Clifton McCleskey, a leading scholar of Texas politics looked at these numbers and concluded, at the end of the 1960s, that gap between voter participation in Texas and the nation was primarily reflective of the reality that "Texas politics is still predominately white, Anglo-Saxon, and Protestant in its candidates and its issues. The very sizeable Mexican-

¹¹ See *Nixon v. Herndon*, 273 U.S. 536 (1927), holding unconstitutional the state law excluding African Americans from the Democratic Primary; *Nixon v. Condon*, 286 U.S. 73 (1932), holding unconstitutional a state law authorizing political parties in Texas to adopt a policy of racial exclusion; *Grovey v. Townsend*, 295 U.S. 45 (1935), holding constitutional a segregation rule adopted by the Texas Democratic Party in the absence of any state legislation; and *Smith v. Allwright*, 321 U.S. 649 (1944), reversing *Grovey v. Townsend* and holding unconstitutional racial segregation on any basis in the Democratic Primary.

Even after that clear ruling, some white Texas conservatives still refused to give up the whites only primary device. In Fort Bend County, where a slave-based plantation economy had left blacks a majority after the Civil War, local Anglos set up a preprimary primary in the 1940s where all the white Democrats for local office would participate in a "private poll" with the losers all dropping out of the official party primary a few weeks later. The U.S. Supreme Court did not buy this subterfuge in *Terry v. Adams* 345 U.S. 461 (1953), and declared this device unconstitutional.

American and Negro minorities in Texas are less politically involved, and their turnout reflects this.”¹²

It was this pattern of low minority participation and very limited opportunities for minority-backed candidates to win in Texas that was the driving motivation for the young Congresswoman from the 18th District of Texas, to lead the fight to bring the state under Section Five of the Voting Rights Act reauthorization. She succeeded, despite very strong opposition from most of the Anglo political establishment in Texas.¹³

B. From 1975 to 2007: The VRA and Political Change in Texas

Barbara Jordan retired from Congress at the end of her third term in 1978, but the periodic extensions of the Voting Rights Act have continued to include Texas under the Section Five provisions. Has that made any difference? Are the minority populations now able to elect representatives of their choice to local, state, and national offices in Texas?

In my opinion, the Voting Rights Act has made a major and positive contribution in the empowerment of African American and Hispanic Texans. This was somewhat evident in the redistricting that followed the 1980 census, the first after Texas was fully subject to the voting rights act. Pre-clearance pressure from the U.S. Department of Justice helped restore and effective black state senate district in Houston, added a few state house seats with black or Hispanic majorities, and encouraged the Legislature to make one of the three new congressional seats (the 27th) Texas gained from reapportionment a Hispanic dominated-district running from Corpus Christi to Brownsville. On balance, however, electoral opportunities for minority voters only improved marginally as most districts were redrawn to protect Anglo incumbents.

The redistricting following the 1990 census was considerably more productive for minority voting rights in Texas and the VRA was a substantial contributing factor. But two other things were also important. The first of these was the continuing surge in minority populations. Table 2 compares the 1980 and 1990 census data for Texas by race/ethnicity. All population groups grew in Texas, but the Anglo percentage gain of 10.1% lagged behind Blacks at 16.8% and was far below the 45.4% increase among Hispanics and the 88.8% growth in the Asian/Other category. Overall, almost half (49.1%) the total growth in Texas over the decade was Hispanic, about a third (34.1%) was among Anglos, and a tenth (10.3%) was non-Hispanic blacks. Obviously, with 60% of the growth in Texas due to black and

¹² Clifton McCleskey, *The Government*

¹³ Congresswoman Jordan's success in overcoming strong opposition on the from her home state on the VRA renewal rested on three factors. First, her personal status after the Watergate hearings had given her enormous credibility with her Democratic House colleagues. Few Democrats in Congress wanted to be called out by the "Voice of God" on the Texas/VRA issue. Second, the post-Watergate 1994 House elections brought in a super-sized Democratic majority so Ms. Jordan needed little help from the minority Republican members. The big freshman class helped stripped several of the Texas congressional "old Bulls" of their seniority-based committee power, which neutered them on the VRA issue. And finally, the Congresswoman was extremely fortunate that Texas Democratic United States Senator Lloyd Bentsen, was getting ready to run for president in 1975. As a southern moderate conservative, Bentsen needed to shore up his flank with national liberals and minorities, so he broke with Texas Governor Dolph Briscoe and other establishment Democrats and helped move the Texas addition to Section Five through the Senate.

Hispanic increases, these populations would have better potential for improving their electoral opportunities than was the case ten years earlier.

Table 2: Racial/Ethnic Population Change in Texas: 1980 to 1990

	1980	1990	Change	
Non-Hispanic Whites	9,350,297	10,291,680	+ 941,383	10.06%
Non-Hispanic Blacks	1,692,542	1,976,360	+ 283,818	16.77%
Hispanics	2,985,824	4,339,905	+1,354,081	45.35%
Non-Hispanic Asian/Other	200,528	378,565	+ 178,037	88.78%
TOTAL	14,229,191	16,986,510	+2,757,319	19.37%

Source: U. S. Census Bureau

The second factor was the competitive partisan balance in Texas. After Republican Bill Clements upset Democratic gubernatorial nominee John Hill in 1978, the GOP steadily moved toward becoming a competitive force in state elections, not just presidential contests. Texas seemed destined to finally realize the dream of reformers and become a true two-party state when Democrats and Republicans swapped victories in the successive governor elections of 1978, 1982, 1986, and 1990. At the same time, Republicans were cutting into the large Democratic legislative and congressional majorities. And with the smaller Democratic majorities in the Texas House and Senate more and more dependent on Hispanic and black voters, the white leadership of these bodies had to give considerably more weight to their minority supporters than had been the case ten years earlier.

And finally, as mentioned, there was the Voting Rights Act. In 1991 the Voting Rights Division of the U.S. Department of Justice was headed by George H. W. Bush appointee John Dunne. As the 1991 redistricting cycle began the DOJ signaled that departmental approval of new maps under the VRA would in part hinge on a maximum effort to create majority-minority districts in the South and other areas under the special provisions of the Voting Rights Act. This reflected the national party's overall strategy of undermining the still numerous white incumbent Democrats in the South, by stripping out minority neighborhoods often vital to the survival of these veteran congress members and state legislators. But whatever the partisan reasons, minority voting rights would be advantaged in the post-1990s redistricting.

Across the South the G. H. W. Bush Justice Department's strategy worked well in states like North Carolina and Georgia where Republicans made sizeable gains at the expense of white Democrats. The plan worked less well in Texas, mainly because legislative Democrats proven very accommodating to minority voter interests by out-bidding Republicans in

drawing favorable new districts for minority voters while protecting most of their Anglo incumbents. The bottom line, as Houston city councilmember Ben T. Reyes, a longtime Hispanic leader on redistricting issues put it, was “The Republicans wanted too much. We got a better deal by working with the Democrats.”¹⁴

After the notable gains of the 1990s in the Texas Legislature and U.S. Congress delegations, the Census numbers from the 2000 count seemed to bode well for African American and Hispanic voters in Texas. As Table 3 shows, Anglo growth slowed notably from the 1980s, with an increase of just 8.1% between 1990 and 2000. At the same time, black, Hispanic, and Asian/Other growth rates rose significantly compared to the previous ten years.

Table 3: Racial-Ethnic Population Change in Texas: 1990 to 2000

	1990	2000	Change	
Non-Hispanic Whites	10,291,680	11,121,317	+ 829,637	8.06%
Non-Hispanic Blacks	1,976,360	2,429,966	+ 453,606	22.95%
Hispanics	4,339,905	6,669,666	+2,329,761	53.68%
Non-Hispanic Asian/Other	378,565	630,871	+ 252,306	66.65%
TOTAL	16,986,510	20,851,820	+3,865,310	22.76%

Source: U.S. Census Bureau

The net result was a decline in the overall Anglo population share from 60.6% in 1990 to 53.3% in 2000. Hispanics, who had accounted for less than half the state’s population growth in the 1980s, made up 60.3% of the net growth in the 1990s, while the African-American contribution rose from 10.3% to 11.7%.

Despite the population shifts, the net effect of the post-2000 redistricting was to increase Anglo congressional representation, and dramatically slow the growth of minority representation in the Texas Legislature. What accounted for the very different result in this cycle compared to ten years earlier?

Three major factors worked to the detriment of minority voters. First, the Anglo Democratic legislative leaders who had been responsive (for reasons for self-interest) to Hispanic and African-American interests in 1991 were cut out of the process in 2001. Republicans used their majority in the Texas Senate and control of the governorship to block all legislative plans, neutering the Democratic majority in the Texas House of Representatives.

¹⁴ From Alexander Lamis, Ed., *Southern Politics in the 1990s* (Baton Rouge: LSU Press, 1999), p. 316.

Second, the removal of the Texas Legislature from the initial redistricting process meant that the 2001 Texas House and Senate plans were drawn by the Texas Redistricting Board, whose three statewide elected Republicans – the Attorney General, Comptroller, and Land Commissioner – accepted plans drawn by U.S. House of Representatives Majority Leader Tom Delay that maximized Republican seats in both chambers of the state legislature. And because the state Republican Party had become almost entirely a conservative Anglo entity by 2001, drawing seats to give minority voters the opportunity to elect candidates of their choice was not an option. The Delay maps worked very well in the 2002 legislative elections and the Majority Leader was then able to use the large Republican majorities in the House and Senate to push through a radical redrawing of the Texas congressional lines to get rid of all or most of the surviving Anglo incumbents.¹⁵ The Delay congressional redistricting was successful in getting rid of seven of ten Anglo Democrats, but resulted in minimal improved opportunities for minority voters. One Anglo Democratic district, the 25th, was redrawn and renumbered (the 9th) to make it an effective African American district in the 2004 elections, but that was balanced off by reducing the Hispanic voting strength in the 23rd District represented by Henry Bonilla, a Republican who had been winning largely due to support from Anglo voters. The addition of conservative Anglo voters into the 23rd District was eventually disallowed by the U.S. Supreme Court in 2005 as a prohibited dilution of its Latino majority, and the court order remap restored it as an effective Hispanic district in 2006.

Third, the dog that did not bark in 2001 and 2003 was the U.S. Department of Justice. In sharp contrast to the previous cycle, the DOJ signed off on all the Texas plans despite counter recommendations from senior staff in the Voting Rights Division. Why did the Bush Justice Department under Bush 43 take a very tack than had been the case with Bush 41? The simple answer is that after the 1990 census, the creation of additional minority opportunity districts in the South could reduce the overall number of Democrats in Congress and state legislatures. By 2001, the situation was different. There were fewer incumbent Anglo Democrats to get rid of, and, with the greater minority population growth in Texas, adding new opportunity districts would likely result in a net loss of Republican seats.

In looking over the quarter-century that followed the inclusion of Texas under Section Five of the Voting Rights Act, it is undeniable that minority opportunities in the electoral process improved. Some of that had little to do with redistricting and just reflected changing demographics. El Paso is a good case in point. As the Hispanic population grew and the Anglo percentage plunged, Anglo incumbent Democrats retired from office and were succeeded by Latinos.

And, for a time at least, the regular legislative process worked to the advantage of minority voting interests. With Republicans winning more and more of the conservative Anglo voters (and seats), Texas Democrats like House Speakers Gib Lewis and Pete Laney, and Lt. Governor Bob Bullock, necessarily became more responsive to minority members. As a result the number of minority opportunity districts was expanded after the 1980 and 1990 Censuses.

¹⁵ Since the Texas Legislature also failed to pass a congressional map, a three judge federal panel produced the map used in the 2002 elections. The panel followed Texas's traditional redistricting practice for Congress and protected the core constituencies of the 30 incumbents, including all 17 Democrats. The two new seats Texas gained were placed in heavily Republican areas. With the reelection of all incumbents, the state's delegation in the U.S. House was 17 Democrats and 15 Republicans.

Finally, the Voting Rights Act has been of unquestioned benefit to the protection of minority voting rights in Texas. Legislative leaders' knowledge that, after 1975, their redistricting work had to pass muster in Washington D.C. has surely tempered efforts to reverse the hard-won gains for Hispanic and African-American voters. Of course, more could have been done. That was especially the case after the population gains measured by the 2000 census were not reflected in the political maps drawn by the 2001 Legislative Redistricting Board and the 2003 Texas Legislature.

C. The 2010 Census and the 2011 Redistricting Process

The 2010 Census showed Texas, as expected, had grown much faster than any other populous state in the union. The net population gain of 4,293,741 resulted in four congressional districts being added to the 32 existing seats, the largest gain in Texas history. As in other recent censuses, minority population growth accounted for the great majority of change, with Hispanics contributing 65.0% and African Americans 13.7%. For the first time in state history, non-Hispanic black growth (589,352) exceeded non-Hispanic white growth (547,955).

Table 4: Racial/Ethnic Composition of Texas Population: 2000 and 2010

	2000	2010	Change	
Non-Hispanic Whites	11,121,317	11,669,272	547,955	4.92%
Non-Hispanic Blacks	2,429,966	3,019,318	589,352	24.25%
Hispanics	6,669,666	9,460,921	2,791,255	41.85%
Asian/Other	630,871	996,050	365,179	57.88%
TOTAL	20,851,820	25,145,561	4,293,741	20.59%

Source: U.S. Census Bureau

The legislative redistricting process in 2011 could hardly have been more different than 10 years earlier. With super-sized Republican majorities in both the Texas House and Senate, redistricting maps were constructed in private and revealed very late in the regular session. Public hearings were minimal, and minority members had little opportunity to preview the House and Senate maps that were passed in the regular session, or the congressional map approved in a special session called by Governor Perry.

The resulting legislative maps (H283 for the House and S148 for the Senate) and the congressional map (C185) repeated the bottom-line results from 2001 and 2003 in that there

was no reflection in the end products of the enormous demographic changes that have occurred in Texas. If these current maps go into effect for the 2012 elections, it will mean that VRA-protected minorities in Texas will have seen virtually no improvement in their opportunities to elect representatives of their choice since the maps produced in the early 1990s when the combined black and Hispanic populations state totaled 6,316,265 out of 16,986,510 (37.2%), compared to 12,480,239 out of 25,145,561 (49.6%) in April 2010.

This legislative failure to improve protected-minority voting opportunities in Texas despite huge population gains relative to the already over-represented Anglos is rooted in several profound changes in American and Texas politics. The most notable of these is the return to what has become statewide an effective one-party system in Texas. And that one party is dominated by very conservative Anglos who have no interest in improving opportunities for minority voters to elect candidates of their choice. In fact, quite the opposite is true. Any gains by VRA-protected minorities are now going to come at the direct expense of the dominant Anglo political establishment in Texas. For much of the 20th century, that dominant establishment was rooted in the Democratic Party. Now, the new Republican Party plays that role.

This reality makes it more critical than ever that the protections afforded for Hispanic and black Texans under the Voting Rights Act not be abandoned. The ills that Barbara Jordan experienced in the 1960s have not been cured, and the remedies she supported are still needed.

II. The Polarization of the American Electorate Along Racial and Ethnic Lines and Its Consequences for Texas Politics

A. The Breakdown of the New Deal Coalition and the Polarization of the American Electorate

During his twelve plus years in office, President Franklin Roosevelt forged an electoral coalition that dominated American politics for nearly 40 years. As Alan Abramowitz has pointed out, that coalition:

... was based primarily on group loyalties, some of whose origins could be traced back to events that took place long before the New Deal, and secondarily on the widespread association of the Democratic Party with prosperity and the Republican Party with economic hardship in the aftermath of the Great Depression.¹⁶

The principal components of the New Deal coalition were white Southerners and white ethnic working class voters in the North. That coalition began to fray in the 1960s and had largely disappeared by the 1980s. Key to its collapse was the shift of white southern conservatives from the party of Roosevelt to the party of Reagan. Republican hopes of building a comparable large and durable coalition to the New Deal combination have been frustrated over the last 20 years as a new political realignment based much more on political ideology has emerged. Issues that were either unknown or ignored in the 1930s like gun rights,

¹⁶ See "Ideological Realignment among Voters," in *New Directions in American Political Partue*, ed. by Jeffrey Stonecash (New York: Rutledge, 2010), p. 126.

abortion, and gay marriage have assumed great importance in guiding voters' partisan leanings in the 21st century. As economic voting faded, new political lines were drawn. White men, especially blue-collar workers, became more conservative and women, especially single women, became more Democratic. Republican gains with less-well educated, church-attending adults were partly offset by losses among better educated, more secular whites.

The racial/ethnic base of the parties has also shifted greatly since New Deal days. Blacks began to move toward the Democratic Party during the Roosevelt years, but the Republicans continued to get a decent share of the black vote through the Nixon-Kennedy election in 1960. That changed when GOP nominee Barry Goldwater adopted the "Southern strategy" and appealed to conservative whites opposed to African American empowerment in the region. The black vote swung to the Democrats, and has remained there for over 45 years. The black vote share of the national electorate has been relatively stable around 10 percent, so Democrats still had to depend on substantial white support to win elections in the 1980s and 1990s.

That need has lessened somewhat in the 21st century as Anglo growth has leveled off, while non-black minority populations, especially Latinos, have surged. These Hispanic voters, and to a lesser extent Asian Americans, have not only been voting in larger numbers, but have also tended to identify more with the Democratic Party in recent years. But as minorities have moved toward the Democrats, more whites have shifted to the Republicans, especially in rural and small towns. Exit polls show no Democratic presidential candidate since Jimmy Carter in 1976 captured as much as 45 percent of white vote, nor have Democratic congressional candidates won a majority of these voters since 1992.

These counter trends became strikingly apparent in the historic 2008 presidential election. For the first time in 56 cycles the serious presidential contenders included a white woman and a black man. After Senator Obama edged out Senator Clinton for the Democratic nomination, he faced Senator McCain in the first black-on-white presidential General Election. Obama won only 43 percent of the white vote, yet captured a larger share of the overall vote (53 percent to McCain's 46 percent) than any Democrat since Lyndon Johnson in 1964. Obama's margin was driven by the fact that the combined minority vote in 2008 was 26 percent, versus just 12 percent in 1992, and the Illinois senator got 80 percent of those voters.

In summary, what we saw in the 2008 election was a combination of two patterns. There was a strong ideological split in the electorate, with people taking a conservative position on abortion, gay rights, support for the military, gun rights, etc., voting Republican, while those on the liberal side supported Democrats. In addition, there was a clear racial/ethnic cleavage, with minorities going heavily Democratic and whites over fifty voting heavily Republican.

B. Post 2008: The Rise of the Tea Party and the 2010 Elections

We now know the election of a black president did not lessen the polarization along ideological and racial/ethnic lines. Quite the reverse, as we see in the emergence of the Tea Party movement within a month after Barack Obama took office in January 2009.

Vanessa Williamson, Theda Skocpol, and John Coggin published the most intensive scholarly analysis, to date, of this phenomenon in their March 2011 article, "The Tea Party and the

Remaking of Republican Conservatism,” (Perspectives on Politics, published by the American Political Science Association, pp. 25 – 43).

Their principal findings include the following:

- Tea Party supporters tend to be older, white, and middle class, with men accounting for 55 – 60 percent of supporters.
- The vast majority are conservative Republicans, many of whom have been politically active in the past.
- The conservative media, led by Fox News, have played a crucial role in forging the shared beliefs and identity around which Tea Partiers have united.
- Tea Party supporters share a general hostility to “government spending,” but they make a major distinction between programs such as Social Security, Medicare, and Veterans benefits, which they see as going to deserving recipients (like themselves), as opposed to programs going to “freeloaders” who have not worked to earn such.
- This “free-loader” hostility is strongly coupled with anger at unauthorized or illegal immigrants, and their fear of immigrants is strongly associated with the ethnic identity of the immigrants in question. Immigration from Mexico is a far greater concern than people coming into the U.S. via Canada.
- And, finally, there is the matter of President Barack Hussein Obama. Only five percent of Tea Party identifiers recall voting for Senator Obama, and much larger numbers of identifiers see him, compared to Americans in general, as a dangerous agent of changes in the country they do not recognize as the one they grew up in. The authors conclude:

At a fundamental level, Obama’s policies and his person are not within the Tea Party conception of America, so his election seems like a threat to what they understand is their country.¹⁷

The principal effect of the Tea Party has been to move the already ideological Republican Party much farther to the right than was the case just a few years ago. It is unimaginable today, for example, that a sitting Republican president could call for comprehensive immigration reform today as George W. Bush did in 2005.

The electoral impact of the Tea Party was dramatically evident in the November 2010 General Election. Overall, turnout was slightly higher than in 2006, but the makeup of the electorate was decidedly older, whiter, and more conservative than is typical for midterm elections. Turnout in midterm elections usually declines modestly among minorities and sharply among young people compared to presidential voting levels, and that was the case in 2010. But what was different in the 2010 midterm was that the older white conservative voters – the heart of the Tea Party coalition – voted at near presidential levels. As Williamson, Skocpol, and Coggin noted, “the midterm election of 2010 was unusually favorable terrain for the Tea Party, and Tea Party activists had an undeniable impact on the election results.”¹⁸ Importantly, they go on to point out:

¹⁷ Ibid., p. 35.

¹⁸ Ibid.

The Tea Party's impact was clearer within the Republican Party. Tea Party mobilizations enabled insurgent candidates to overtake and defeat a number of officially endorsed GOP candidates, including incumbents. Many mainstream Republicans, including Bob Bennett in Utah, Charlie Crist in Florida, Lisa Murkowski in Alaska, Sue Lowdon in Nevada, and Mike Castle in Delaware, lost their primaries to Tea Party candidates.¹⁹

On balance, the author conclude the Tea Party's mobilizing effect likely helped Republicans gain control of the U.S. House and make large gains in state legislative seats, while hurting the GOP's chances of taking over the U.S. Senate by nominating extreme and inexperienced candidates in states like Nevada, Colorado, and Delaware that had little appeal to independent voters in those competitive states.

If the national Tea Party movement has transformed American politics in general and the 2010 election in particular, its effects have been even more profound in Texas and on the Texas Republican Party. I turn to that subject in the following section.

C. Texas

The "Obama Effect"

If the 2008 presidential election illustrated major changes nationally, it also had quite important effects in Texas. Attached to my statement is an article I wrote on that subject in 2009, but I would like to summarize some of the key findings from that study.

- While Senator Obama was a much stronger candidate nationally where he won 53 percent of the vote compared to 44 percent in Texas, the Democrat did much better than recent nominees of his party in the five largest metropolitan counties than included nearly 44 percent of the 2010 state population. He also increased the Democratic vote share in the five biggest suburban counties from 31 percent in 2004 to 38 percent in 2008. And he carried the majority Hispanic border counties by 64 percent, and 11 point increase compared to 2004.
- The big downside to the Obama candidacy was in rural and small town Texas where he ran behind Senator John Kerry's anemic 2004 performance.
- Obama's nomination drove up turnout in heavily African American areas, but his greatest impact was in the *fast-growing mixed suburban neighborhoods where the Democratic vote was dramatically higher*.
- In summary, Senator Obama lost Texas by nearly 12 percentage points, but he not only improved Democratic performance overall, but did far better than any nominee of his party in the suburban areas around the state's cities – the fastest growing part of the Lone Star State. Obama did poorest in the rural and small towns and cities – the slowest growing part of the state.

The Tea Party in Texas and the 2010 Primaries and General Election

Nationally, most observers date the Tea Party movement to mid-February 2009 when CNBC reporter Rick Santelli burst into a tirade against the new Obama administration's economic policies while reporting from the floor of the Chicago Mercantile Exchange. Mr. Santelli

¹⁹ Ibid., pp. 27-28.

invited America's "capitalists" to a "Chicago Tea Party" to protest the outrageous actions being taken in Washington, D.C.. Word quickly spread through the Internet and conservative media like the *Drudge Report* and a first wave protests occurred across the country on February 27, 2009. Small crowds showed up at these events, but Fox News and other media began highlighting the movement, and momentum built toward a national Tax Protest day, in mid-April.

One of those protests was in Austin, Texas. And one of the attendees was Governor Rick Perry. Governor Perry, now the longest serving chief executive in Texas history, was generally viewed at the time as politically vulnerable. He had won reelection in 2006 with just 39 percent of the vote, the smallest plurality since F.R. Lubbock's 38 percent in 1861. Perry's vulnerability was not to Democrats, who had not won any statewide office since 1994, but rather because of unhappiness among conservatives within the Republican Party for policies like the Trans Texas Corridor plan. The Governor had run especially poorly in rural and small town areas in 2006 compared to the usual Republican performance, even losing his home county, Haskell to a virtually unknown and underfunded Democrat, Chris Bell from Houston. And, in 2009, Perry faced the likely prospect of having to fend off United States Senator Kay Bailey Hutchison for the 2010 gubernatorial nomination. The popular senior senator had mused for years about running for governor, very nearly challenging Rick Perry in 2006, but this time she seemed to really mean it.

But things began to turn around for the Governor at the Austin rally, as he fired up the crowd with a rousing anti-Washington message. Whether through foresight of good fortune, Governor Perry – a long-serving professional politician that voters seemed to have tired of – was the first prominent elected official in the United States to get out in front to the Tea Party movement. He would reap huge benefits.

What Governor Perry seemed to instinctively sense, long before most of the Republican establishment, was that with the coming to power of President Obama and the congressional Democrats in Washington, a full-throated attack on the national capital was now possible in sharp contrast to the days when President George W. Bush and Majority Leader Tom Delay were the most powerful people in the national government.

Texas was an especially great place to get out in front of the Tea Party pitchforks and torches. The Lone Star State had been John McCain's best state among the top ten in electoral votes so there was no down-side to coming out swinging against Barack Obama early.²⁰ Texas has a long tradition of opposing taxes, especially taxes on business and wealthy individuals, so the Tea Party's anti-tax, cut spending, get government off our back mantra was surely going to be welcomed in the Lone Star State. Hostility toward immigration, especially illegal immigration from *Mexico*, was a no-brainer that the governor had already exploited in previous campaigns. Couple the longest American border with Mexico and the very rapid growth of Hispanics in Texas, and you have a more potent issue than most places in the country save possibly Arizona. Then, on top of the black president in Washington, Texas was seeing both a surge of population growth and participation by the state's African American population. These developments gave real force to the "take our country back" rhetoric of the

²⁰ John McCain lost eight of the top ten electoral vote states, and only carried Georgia by five percent, versus his 12 percent margin in Texas.

Tea Party. Add to this the fact that Governor Perry, as a long-serving state official, could more easily distance himself from the “mess in Washington” than many politicians.

The impact of the Tea Party within the national Republican Party that Williamson, Skocpol, and Coggin described, was even more profound within Texas. The fate of two incumbents in the March 2010 primary made that clear. Senator Hutchison, the most popular Republican in Texas in March 2009, was crushed a year later by Governor Perry 51% to 30% in the gubernatorial primary, with the remaining 19 percent going to Debbie Medina, a far right Libertarian. Ms. Hutchison, who had supported the Troubled Asset Relief Program in 2008 at the behest of her party leader and president, George W. Bush, was renamed Kay “Bailout” Hutchison by her more nimble fellow career politician.

Down ballot, little attention was paid to the Republican Primary contest for Railroad Commissioner. Incumbent Victor G. Carrillo had originally been appointed to the commission by Governor Perry, continuing the Texas Republican Party’s efforts begun by George W. Bush to avoid Governor Pete Wilson’s anti-Latino stance in California that had alienated Hispanics and other minority citizens to the great detriment of the state party. Carrillo drew three Anglo opponents in the March 2004 Republican Primary, and almost avoided a runoff with 49.6% of the vote. Carrillo, with Governor Perry and party establishment backing, crushed Robert Butler in the April 2004 runoff, 62.8% to 37.2% and was expected to have little trouble with an unknown opponent, David Porter, in the March 2010 primary. But, although lacking both statewide name ID and no money, normally fatal, David Porter crushed Victor Carrillo 60.7% to 39.3% in March 2010.

Why did Porter v. Carrillo turn out so different from Butler v. Carrillo? The 2004 Republican primary and runoff were “normal” low-turnout events where party establishment choices did well. But in 2010, 1,484,542 votes were cast for governor in the GOP primary, more than twice the total vote in the 2004 election. The same Tea Party activated voters – primarily older Anglos – were obviously much less willing to vote for an establishment-backed *Latino* Republican when a perfectly good Anglo name was also on the ballot than had been the case six years earlier.

In November 2010 the Tea Party surge continued across Texas, as it built on virulent opposition to President Obama, bitter hostility to administration policies like the 2010 health care reform act,²¹ growing Anglo support for tough immigration laws, and a strong anti-tax, anti-spending sentiment that took hold as a looming state budget crisis took shape in Austin for the coming biennium. The Texas result was even more profound than the national “shellacking” Democrats took on November 3, 2010. Republicans easily won all statewide offices, continuing a winning streak stretching back to 1996, with Governor Perry’s 55% to 43% win over Democratic nominee Bill White being the only instance where a Democrat came within 20 points of a Republican. In Congress, Chet Edwards, the last of the “Blue Dog” rural/small city Democrats was handily defeated, as were two Latino Democrats in majority Hispanic districts in South Texas. In the Texas House, all opposed Anglo Democrats lost outside major metropolitan areas (and the unopposed member switched parties after the election). Democrats also lost more than a dozen urban House seats, most by narrow margins, and saw a previous Republican majority of 76 – 74 end up as 101 – 49. The Texas Senate,

²¹ On the health care issue, the national board of the American Medical Association supported passage of The Affordable Health Care Act of 2010. The Texas Medical Association came out in strong opposition.

with half the seats not up and few incumbents facing funded challengers, remained 19 Republicans to 12 Democrats.

The rise of the Tea Party in Texas helped bring back some of the discriminatory electoral strategies from earlier years aimed at minority voters in Texas. Leading the charge in Houston was the King Street Patriots, a Tea Party affiliate that reprised some of the same “ballot security” programs aimed at suppressing black and Hispanic voting in October and November 2010 that Chandler Davidson had described in the 1980s.²² The local group mobilized several hundred “patriots” to monitor early and in-person voting at Harris County polling places, to make sure that the election was not being stolen. Of course, all the stealing was taking place in inner city minority neighborhoods, so that is where the all-white, older patriotic brigades needed to be deployed. The racist element of these efforts was evident in a photo posted in October on the King Street Patriots website showing a black man holding a sign with the words “I only got to vote once,” with a white woman behind him holding a second sign saying “I’m with stupid.” The patriots did not turn up any specific examples of vote fraud, but they did create a number of confrontations with voters and election officials at minority polling places across the county.

It should be pointed out that minority suppression at the polls did not start with the emergence of the Tea Party in Texas. Harris County Tax Assessor-Collector and Registrar of Voters used his position in 2008 to slow the dramatic rise in voter registrations that year among younger, mostly minority, applicants. The Houston Chronicle documented his office’s practice of rejecting thousands of applications because of minor errors that were not disqualifying in other large counties.²³ Bettencourt’s office, claiming to be over-whelmed by the surge in applications in the fall, also created a massive backlog of unprocessed voter registration cards that prevented voters who had legally registered from casting regular ballots in 2008.²⁴ That failure resulted in thousands of provisional ballots being cast in 2008 by persons who had filled out registration cards before the early October deadline, but whose names were not on the rolls when they showed up to vote several weeks later. These actions resulted in the Texas Democratic Party suing Mr. Bettencourt in federal court, alleging, among other charges, that he had violated the Voting Rights Act. With depositions scheduled before a January court date, Mr. Bettencourt abruptly resigned in early December 2008, despite having just been reelected to a four year term a month earlier.

Of course, underlying the efforts of elected Republicans such as Paul Bettencourt and activists like the King Street Patriots is the reality that Texas Republicans wrote the African American vote off in 1964 with the Goldwater-Johnson election. Now, with the rise of the Tea Party inspired extreme right in the 21st century, the state’s majority party seems hell-bent on driving Hispanics, who have traditionally given about a third of their votes to GOP candidates, in the same direction. If you are not going to compete for the votes of folks who make up half the total population of Texas, 45 percent of the voting age population, and a third of the total registered vote, it makes very good sense to both keep down the *size of the minority vote in*

²²Davidson, *ibid.*, p. 243.

²³ The Houston Chronicle, July 28, 2008.

²⁴ The Houston Chronicle, October 18, 2008. Mark Greenblatt, an investigative reporter for the local CBS affiliate, KHOU Channel 11, filed a series of stories in October 2008 on Mr. Bettencourt’s office’s failure to get tens of thousands of timely applications processed before the polls opened.

general elections, and, and we shall see, to make sure the impact of those minorities who do vote is limited by how representative districts are drawn.

Revisiting Racial and Ethnic Polarization in Texas as Reflected in the Party Primaries

The 2010 General Election results showed an intensification of the racial-ethnic lines of division in Texas voting. But it should be stressed that polarization is evident well before the November vote occurs. It is starkly evident in the extremely different patterns of participation in the party primaries in March of even-numbered years.

Table 5: Primary Vote Participation in Texas: A Comparison of A Predominately Anglo, Black, and Hispanic Precincts in Harris County in 2008 and 2010

<u>Precincts with a Black VAP Above 85%</u>						
Pct	March 2010 Primary			March 2008 Primary		
	Dem.	Rep.	Dem %	Dem.	Rep.	Dem %
031	422	7	98.4	833	9	98.9
068	374	15	96.1	837	3	99.6
136	509	8	98.5	997	8	99.2
156	626	10	98.4	1458	5	99.7
158	458	4	99.1	987	6	99.4
294	468	1	99.8	1012	5	99.5
Mean %			98.4			99.2
<u>Precincts with a Hispanic VAP Above 85%</u>						
011	107	24	81.7	487	13	97.4
062	135	43	75.8	607	58	91.3
065	144	54	72.7	618	34	94.7
079	183	26	87.6	868	22	97.5
530	54	18	75.0	318	30	91.3
560	70	10	87.5	357	6	98.3
Mean %			80.1			95.1
<u>Precincts with an Anglo VAP Above 80%</u>						
040	206	327	38.6	982	206	82.7
130	63	633	9.1	393	619	38.8
213	111	792	12.3	612	779	44.0
303	103	753	12.0	463	817	36.2
420	103	629	14.1	590	751	44.0
442	40	431	8.5	286	528	35.1
451	50	756	6.2	315	815	27.9
Mean %			14.4			44.1

Source: Harris County Clerk Website: HarrisVotes

Texas does not have voter registration by party, so all qualified electors can choose to participate in either primary. These 2010 and 2008 data from Harris County show almost zero black voting in the Republican Primaries, and very, very little Hispanic participation. A sizeable minority of Harris County Anglos voted in the 2008 Democratic Primary when there was a heated match between Senators Clinton and Obama for the Democratic presidential nomination while the Republican race had largely been sewn up by Senator McCain.²⁵ However, in 2010 with no presidential contests on the ballot and the Perry/Hutchison/Medina contest on the Republican Primary ballot, Anglo GOP voting hugely outpaced Democratic voting save for one precinct.

The Harris County primary vote pattern is mirrored in Dallas, Bexar, and Tarrant Counties, as well as the heavily Hispanic areas along the border. There are a shrinking number of rural Anglo counties where whites still vote in the Democratic Primary, and Travis County remains a predominately Democratic County in the March primaries. There are also some upscale inner-city white areas like the Heights and Precinct 040 (see Table Five) near Rice University in Houston that have significant Democratic voting in the primaries, but overall participation on the Democratic primary side is now heavily skewed toward minority voters. Conversely, there are virtually no black and very few Hispanic voters in the Republican primaries.

There is one other interesting aspect about recent primary voting in Texas compared to past patterns. When Democrats were dominant in Texas after 1900, voting in the majority party primary was robust, despite the poll tax. In 1964, for example, 1,630,297 votes were cast in the May primary, representing more than 50 percent of registered voters in the state.²⁶ While conservative Anglos were the largest segment of the Texas Democratic electorate, the diversity of the voter base was sufficient that, under favorable circumstances, liberals like Ralph Yarborough could win the primary and be elected in November.

In very sharp contrast, the Republican statewide dominance since 1994 has not produced a larger party primary electorate. Even with a hotly contested gubernatorial primary in 2010 with more than 40 million dollars spent, the total GOP vote for governor was 1,484,542, which represents *less than 12 percent of the thirteen million Texans registered to vote*. To put this number in perspective, if the same vote percentage of registered voters in Texas had participated in the party primary that nominated the eventual governor in 2010 as participated in 1964, the Republican Primary turnout would have been about seven million voters, not 1.5 million.

Racially Polarized Voting in Recent General Elections in Texas

Voting rights cases usually involve a good deal of scrutiny of the degree of racially polarized voting in relevant elections. In Texas this results in focusing primarily on the General Elections because, as we have noted, there are virtually no minority voters in the Republicans Primaries, making racial/ethnic polarization impossible to measure in these contests. And in

²⁵ Some of the Anglo Democratic Primary vote was due to "raiding," as radio talk show host Rush Limbaugh urged Republicans to cross over and vote for Senator Clinton to keep the Democratic race going. Limbaugh labeled this "operation chaos."

²⁶ Texas Almanac, 1968-1969, published by The Dallas Morning News, p. 597.

Democratic Primaries, the shrunken white vote is much more racially and ethnically tolerant of minority candidates than was the case in past decades simply because Anglos who have problems supporting black or Hispanic candidates either vote in the GOP contests, or – more often – simply skip voting in March primaries.

That leaves us with the General Elections as the key test of racial polarization, because these are the only partisan contests that reflect the racial and ethnic diversity of the state's population. Table 6 looks at the same three sets of precincts in Harris County that we used to compare differences in party primary participation in 2008 and 2010.

Table 6:

General Election Partisan Voting Patterns in Texas: A comparison of Anglo, Black, and Hispanic Precincts in Harris County in 2008 and 2010

<u>Precincts with a Black VAP Above 85%</u>												
Pct	<u>2010 Governor Vote</u>			<u>2010 Straight Party Vote</u>			<u>2008 President Vote</u>			<u>2008 St. Party Vote</u>		
	Dem	Rep	Dem%	Dem	Rep	Dem%	Dem	Rep	Dem%	Dem	Rep	Dem%
031	849	17	98.0	735	7	99.1	1463	18	98.8	1216	12	99.0
068	847	22	97.5	743	11	98.5	1371	9	99.3	1163	5	99.6
136	902	36	96.2	695	13	98.2	1462	47	96.9	1026	16	98.5
156	1265	43	96.7	1008	18	98.2	2080	56	97.4	1570	27	98.3
158	952	22	97.7	823	7	99.2	1666	22	98.7	1407	10	99.3
294	883	13	98.5	772	5	99.4	1348	17	98.8	1075	7	99.4
Mean %			97.4			98.8			98.3			99.1
<u>Precincts with a Hispanic VAP Above 85%</u>												
011	388	93	80.7	275	58	80.2	496	185	72.8	391	69	85.0
062	477	124	79.4	323	88	78.6	619	277	69.1	445	113	79.7
065	489	111	81.5	376	75	83.4	610	236	72.1	472	116	80.3
079	634	138	82.1	443	89	83.3	855	343	71.4	649	136	82.7
530	259	60	81.2	219	45	83.0	323	134	70.7	268	57	82.5
560	212	54	79.7	159	35	82.0	339	113	75.0	236	43	84.6
Mean %			80.8			81.8						82.5
<u>Precincts with an Anglo VAP Above 80%</u>												
040	1010	529	65.6	388	349	52.6	1238	851	59.3	550	419	56.8
130	435	1015	30.0	132	803	14.1	501	1331	27.3	242	865	21.9
213	621	1440	30.1	137	1079	11.3	616	1922	24.3	225	1185	16.0
303	513	1459	26.0	154	1119	12.1	570	1911	23.0	235	1233	16.0
420	484	1795	21.2	167	1391	10.7	578	2626	18.0	348	1547	18.4
442	347	1141	23.3	110	909	10.8	345	1569	18.0	174	996	14.9
451	355	1382	20.4	110	1117	9.0	377	1718	18.0	199	1197	14.3
Mean %			30.9			17.2			26.8			22.6

Source: Harris County Clerk website, HarrisVotes!

These homogeneous precinct data confirm the statewide exit poll from 2008 which showed black voters in Texas supported Barack Obama by a margin of 98% to 2%, and Hispanic voters favored the Illinois senator by a margin of 63% to 35%. Anglos supported Senator McCain by a 73% to 26% margin. Clearly, General Election voting in Texas is highly polarized along racial-ethnic lines with sizeable majorities of Anglos voters opposing the candidates favored by black and Latino voters.

It should be noted, however, that there are some important differences within the overall Anglo voting population. As has been the case nationally, the candidates supported by minority voters in Texas like Senator Obama in 2008 and former Houston Mayor Bill White in 2010, can also win majorities from well-educated, inner-city Anglo voters. Note Harris County Precinct 040 in Table 6. This precinct, part of affluent neighborhood near Rice University is one of 40 or so inner-city Anglo precincts in Harris County that support the same candidates that protected minority voters in Houston back. There are similar Anglo urban precincts in Dallas County, and a sizeable part of Travis County shares this pattern. So, while most of the Anglo dominated areas in Texas now vote in a highly polarized manner against the candidates preferred by black and Hispanic voters, there are important exceptions in selected areas in metropolitan Texas.

Polarization and the 2011 Legislative Session

With the Texas electorate now sharply polarized along racial/ethnic lines, it was not surprising to see the 2011 Texas Legislature was similarly divided. The 2010 tsunami that swept across Texas and much of the nation brought to Austin, as noted, huge Republican majorities in the House and Senate. The surviving Democrats include a few urban white Democrats from coalition districts, but 90 percent of the party's members were minorities. On the other side, the Republican majority ranks were 98 percent Anglo.

This unprecedented partisan division along racial-ethnic lines had many consequences in the regular and special sessions of 2011. In basic policy, perhaps the most important was the severe cuts in education and health care funding – cuts that will disproportionately impact black and Hispanic Texans and were unanimously opposed by the Democrats, but with little overall impact on the final results. Much of the rest of the sessions focused on “red meat” conservative issues including further restrictions on abortion, civil lawsuits, and expanding gun rights. The Anglo Republican majorities also pushed hard on a voter ID bill bitterly opposed by both black and Hispanic Texans (it passed) and a “sanctuary cities” bill that Hispanics saw as moving Texas toward Arizona-type discrimination in law enforcement (it failed, largely because of procedural factors).

Throughout the session, Governor Perry and the Tea Party House members drove the show, enabling the former to firm up his credentials with social conservatives nationally if he pursues a presidential race this year. And the latter made sure there were no meaningful compromises with the most minority Democratic side of the aisle. The same pattern held on redistricting, as the 2011 Legislature passed plans for the Board of Education, the Texas House and Senate, and the United States Congress – with all four plans having the effect of diminishing the political opportunities for black and Hispanic voters in Texas.

The Increasing Unity Between Black and Hispanic Voters in Texas

African American and Latino Texans have usually found themselves on the same side in Texas politics – outsiders looking in on an Anglo-driven process. This pattern has become more evident in recent years. Some of the reasons have been touched, but because it is an important factor in a state with two large minorities that is covered by the Voting Rights Act, this increasing unity of blacks and Hispanics should be examined more closely. The common cause of this unity is rooted in the following:

- Historic discrimination like the Terrell Laws that deprived both populations of their political rights through devices like the poll tax and at-large elections.
- Shared economic and policy interests in the areas such as educational access, affordable health care, and fairness in the criminal justice process. Black and Hispanic Texans have far lower median family income than Anglos, less formal educational attainment and higher dropout rates, lower home-ownership, and far higher levels of incarceration compared to Anglos. Recent studies show the Great Recession has harmed black and Hispanic residents of Texas far more than non-Hispanic whites.
- The national Democratic Party has become more dependent on support from both minority groups, and this is even more true in Texas because Anglos have polarized toward the Republican Party, and the minority populations in Texas are both large and growing fast. Texas Republicans have made minimal effort to win black voters since the Goldwater campaign, and with the retirement of George W. Bush from elective office, the state party has pulled back from Hispanic outreach in the 21st century.
- Add to that the emergence of the Tea Party and its impact within the Republican Party. The movement's rhetoric of "taking our country back" hardly sends a welcoming message to the growing minority populations in Texas (who took it away, one wonders?) On immigration, cutting safety net programs to the bone, attacking birth citizenship, and a range of other issues, the Tea Party has pulled the GOP very, very far to the right in Texas.
- With the Tea Party driving the 2011 legislative show in Austin we saw moderate Republicans like Lt. Governor David Dewhurst and Speaker Joe Straus running for the tall grass, while the surviving black and Hispanic legislators fought, and usually lost, a rear-guard action.

We note this strengthening of the bonds between black and Hispanic voters in the second decade of the 21st century is particularly evident in the large metropolitan areas of Texas. This is important because this is both where most overall population growth is occurring, as well as where local black and Latino numbers are surging. This unity is essential to both minority populations in Dallas-Fort Worth and greater Houston. The majority of Anglos in these areas have polarized against candidates supported by black and Hispanic voters, so for protected minorities, uniting behind the same candidates in November General Elections is now a necessity. And that has happened.

III. The 2011 Redistricting Process in Texas and the Resulting House Plan H283

A. Revisiting Demographic Changes in Texas and Its Political Consequences

We have previously noted the interesting fact that despite huge protected minority population growth in Texas since the 1990 census, the plans passed by the Texas Legislature in 2001, 2003, and 2011 have not reflected that growth. It is particularly interesting that this happened in the most recent legislative session, given the notable slowing of Anglo growth in Texas to just 4.9% compared to a 24.3% increase in the African American population, and a 41.9% gain among Hispanics in Texas.

Aside from this disparity in population growth over the decade, two other demographic factors were very relevant to the most recent redistricting. First, *growth was very uneven across the state*. Much of rural and small town Texas saw no growth, or even population losses over the decade, with the exception of Hispanic areas along the border. This complicated things greatly for the big Republican majorities, because all the members from these declining areas were members of their delegations. With almost all the population gains in Texas in the three “megapolitan” areas of Dallas/Fort Worth, Austin-San Antonio, and Houston, followed by majority Hispanic counties along the Mexican border, inventive ways were going to have to be used to preserve Anglo dominance because these areas now included far more minority residents than whites of non-Hispanic origin, minorities that have lately been voting together against the candidates supported by most Anglo voters. An additional complication was the presence in the big urban core counties of Harris, Dallas, Tarrant, and Travis of fairly sizable Anglo populations – young, better educated, more affluent – more likely to vote for candidates like Barack Obama or Bill White that minorities were supporting.

The second general factor of great importance to redistricting was *the very rapid suburbanization of the minority populations in Texas*. White flight to the suburbs dominated the demographic shifts in Texas from 1960 to 2000, making these areas increasingly Republican and more and more a force in statewide elections. After 2000 that process greatly slowed. There were now comparably fewer Anglos left in the older urban centers – they had already left, and fewer non-Hispanic whites were moving to Texas than had been the case in earlier decades. Meantime, minority immigration to Texas continued, and with low Anglo birth rates plus higher death rates compared to the minority populations, suburban growth is increasingly driven by black, brown, and Asian flight from central cities. This produced a very large number of racially and ethnically mixed neighborhoods in Texas over the decade, and these areas are key to the 2011 redistricting process. If plans are produced that gave the large, and growing, Hispanic and black populations in these areas reasonable opportunities to elect candidates of their choice, the legislative and congressional delegates from 2012 to 2020 would reflect this new Texas. Conversely, if plans are drawn that marginalize the fastest growing segment of the Texas population – suburban Hispanics and blacks – then the elected representatives of the people over the next decade will look more like Texas in 1990 than the present reality.

Before looking at the specifics of the H283, it is useful to look more closely at the new racial mixed suburbs, and how the increasing protected minority populations changed the local voting results. Table 7 summarizes population and vote data for six suburban voting precincts

Table 7: Population Change and Presidential Vote Patterns in Mixed Precincts in Harris County: 2000 – 2010

		<u>Total Population</u>					<u>Voting Age Population</u>				
Pct	Year		Anglo%	Hisp%	Black%	Other%		Anglo%	Hisp%	Black%	Other%
599	2000	3,324	62.8	16.4	14.4	6.5	2,368	66.8	14.7	12.8	5.5
	2010	13,237	19.4	39.7	36.5	4.4	8,904	23.8	37.0	34.3	4.9
			<u>Rep</u>	<u>Dem</u>	<u>Dem%</u>						
Pres Vote in	2000.....		849	457	35.0						
	2004.....		936	676	41.9						
	2008.....		1049	1855	63.9						
Pct			Ang%	Hisp%	Blk%	Other%					
553	2000	7,367	43.6	36.1	13.2	7.1	4,652	46.7	33.3	12.4	7.6
	2010	11,303	22.6	52.7	16.4	8.3	7,512	26.4	49.1	15.5	9.0
			<u>Rep</u>	<u>Dem</u>	<u>Dem%</u>						
Pres Vote in	2000.....		903	702	43.7						
	2004.....		1161	866	42.5						
	2008.....		1051	1219	53.7						
Pct			Ang%	Hisp%	Blk%	Other%					
600	2000	6,835	38.6	31.7	16.6	13.0	4,680	41.7	29.9	14.5	13.9
	2010	7,920	20.8	43.1	22.3	13.8	5,728	24.6	39.5	21.3	14.6
			<u>Rep</u>	<u>Dem</u>	<u>Dem%</u>						
Pres Vote in	2000.....		840	641	43.3						
	2004.....		952	1103	53.7						
	2008.....		830	1363	62.2						
Pct			Ang%	Hisp%	Blk%	Other%					
605	2000	8,169	23.4	37.6	33.3	5.7	5,108	26.4	35.5	31.9	6.3
	2010	13,431	10.2	59.5	27.1	3.2	8,537	12.5	55.7	28.1	3.7
Pres Vote in	2000.....		668	1323	66.4						
	2004.....		871	1640	63.9						
	2008.....		745	2297	75.5						
Pct			Ang%	Hisp%	Blk%	Other%					
614	2000	7,321	36.3	20.1	24.3	19.3	5,204	39.8	18.4	22.2	19.6
	2010	8,433	15.5	39.3	28.3	16.9	6,010	18.5	35.2	28.4	17.9
			<u>Rep</u>	<u>Dem</u>	<u>Dem%</u>						
Pres Vote in	2000.....		1124	946	45.7						
	2004.....		1150	1261	52.3						
	2008.....		886	1554	64.7						
Pct			Ang%	Hisp%	Blk%	Other%					
765	2000	7,876	36.7	21.9	20.8	20.6	5,745	39.3	21.1	18.7	20.9
	2010	7,570	23.8	30.0	31.5	14.7	5,725	27.2	28.0	28.9	15.9
Pres Vote in	2000.....		988	761	43.5						
	2004.....		934	985	51.3						
	2008.....		853	1295	60.3						

Source: Voting data from Harris County Clerk.

in Harris County, Texas. The total population and voting age population for each precinct are shown from the 2000 and 2010 censuses. The profiled precincts are in the new “landing zone” for the massive out-migration of Hispanic and black residents of Houston. As such, the precincts were growing, and their Anglo population percentages were dropping sharply. In 2000 there were 40,892 people in these precincts. By 2010 that number had risen to 61,894, a 51.4% increase. Given that the state of Texas and Harris County were growing about a 20% over the decade, it is clear these mixed areas were accounting for a much larger share of the overall growth than most parts of the county or state.

Not only were these areas growing, but all of that growth was from minorities. In 2000, the mean Anglo percentage in these precincts was 40.2, the Hispanic percentage was 27.3, and the black mean was 20.4%. By 2010 the Anglo mean had dropped to 18.7%, while the Hispanic percentage rose to 44.1%, and the black mean was 27.0%.

With rapid minority growth, the vote patterns in the precincts also changed. In 2000, the Democratic presidential nominee, Al Gore, got 4,830 votes in these precincts, or 46.3% of the two-party vote, to 5,372 votes for George W. Bush lead in five of the six boxes. In 2004, John Kerry, the Democratic nominee got 6,531 votes, or 52.1% of the two-party vote in these same precincts. Kerry won four precincts, Bush two. In 2008, Senator Obama received 9,583 votes in these same precincts, to 5,414 for Senator McCain, a 63.9% share of the two-party vote. With strong support from minority voters, Obama carried all six precincts.

One might hypothesize that as upward-mobile minority voters moved into suburbs dominated by Anglos who favored Republicans, they would adopt the voting habits of the local residents. That did not happen in Harris County, nor in Dallas or Tarrant County, where the same out-migration of minorities was transforming suburban areas.

In summary, when one looks at the overall pattern of protected minority population and voting growth in metropolitan areas, almost all occurred in the suburbs. The inner-city wards and barrios had little population growth, and voting levels declined. But the surging suburban vote, coupled with Anglo declines, drove up the overall Democratic vote.

B. Analyzing Plan H283

Overall Considerations

After their electoral sweep in November 2010, legislative Republicans totally controlled the 2011 redrawing of maps for the state Board of Education, the U.S. Congress, the Texas Senate and the Texas House of Representatives. As we have mentioned earlier, the map-drawers this year faced several challenges. These included the following:

- Many incumbents to protect
- Little if any population growth in rural Anglo areas completely represented by Republicans
- Strong growth in Hispanic areas that traditionally vote Democratic
- Metropolitan area growth was due to non-Anglos, with 90% accounted for by blacks and Hispanics with protected status under the Voting Rights Act

- Having to draw maps that would be tested in a presidential election year with much higher turnout among black and Hispanic voters than occurred in the 2010 midterm election.
- Virtually no ability to reach out to minorities as in 1991, or even 2003 and make the case that enhancing Republican opportunities could be beneficial to minority voters at the expense of white Democrats.

Because of the last point, a major difference in the 2011 redistricting cycle in Texas compared to earlier years was that the combination of great GOP success with Anglo voters, and the accompanying polarization of black and Hispanic voters toward Democratic nominees in recent General Elections, created essentially a zero-sum game. Minority gains in representation opportunities would have to be to the expense of Republicans, and any further Republican gains would have to be at the expense of protected minority voters. That sharp reality has brought the Voting Rights Act into play. This is because while the 2011 map-drawers will likely say that their changes this year were nothing more than the usual partisan gerrymander like the Democratic maps in 1981 and 1991, or their own maps in 2001 and 2003, and thus should pass muster with the Department of Justice and the federal courts, the reality is that the 2011 maps in question have violated the voting rights of protected minorities. This is especially the case in four large urban counties – Harris, Dallas, Tarrant, and El Paso.

How was this done? Let us start with the case of the House plan to redraw Harris County.

Plan H283 and Harris County

As the state's most populous county, Harris had a sixth of the total membership of the House. It had also experienced very large minority growth, and sizeable net loss of Anglos, so preserving 14 of 25 existing districts represented by Anglo Republicans was going to be challenging.

Table 8 documents the principal source of the challenge of maintaining Anglo dominance in Harris County. The root of the problem is the combination of the 20-year decline in the county's Anglo population with continued surging growth by Hispanics plus an uptick in African American growth since 2000. Since both these protected minorities have been supporting Democratic nominees in Harris County without respect to race or ethnicity, preserving 14 Anglo Republicans was going to be more than a stretch, yet Plan H283 promises to deliver that by a variety of means that, in my opinion, significantly diminish the opportunity for minority voters in Harris County to elect candidates of their choice. Let me detail the most obvious of these discriminatory actions.

(1) The reduction of the county's delegation from 25 to 24 seats despite the fact that Harris County had almost exactly the same rate of growth over the decade (20.4%) as did the state (20.6%). Defendants will likely argue that dividing the county population by 167,637 – the ideal population for a House seat based on the 2010 census – yields 24.41 and they simply rounded down to the nearest whole number. However, in 2001 the same folks controlled the

Table 8: Population Change in Harris County: 1990 to 2010

	<u>1990</u>	<u>Population</u> <u>2000</u>	<u>2010</u>	<u>Change</u> <u>2000-2010</u>
Non-Hispanic Whites	1,528,113 54.2%	1,432,264 42.1%	1,349,826 33.0%	-82,438 - 9.1%
Hispanics.....	644,935 22.9%	1,119,751 32.9%	1,671,540 40.8%	+551,789 + 7.9%
Non-Hispanic Blacks	527,964 18.7%	631,780 18.6%	775,345 18.9%	+143,565 + 0.3%
Asians/Others.....	117,187 4.2%	216,783 6.4%	296,928 7.3%	+ 80,145 + 0.9%
TOTAL.....	2,818,547	3,400,578	4,092,459	+ 691,881

Source: U.S. Census

state map drawing and Harris County's population divided by 139,012 yielded 24.46 seats yet that year the state chose to *round up to 25* in contrast to 2011 when they elected to *round down*. Following a consistent rule would result in either assigning 24 seats ten years ago, or keeping the 25 member delegation this year.

Why the difference? Given the great protected minority growth over the last decade, and the documented recent history of racially polarized voting, leaving the delegation at 25 would have almost certainly resulted in a district that Hispanic and black voters would have had an opportunity to elect a candidate of their choice in the 2012 General Election.

Finally, we note that if the federal lawsuit filed by State Representative Harold Dutton of Houston is successful in having persons incarcerated in Texas counted for purposes of apportionment and redistricting in their county of residence, as a recent decision elsewhere has ruled, Harris County would clearly be entitled to 25 seats.

(2) In reducing the delegation from 25 to 24, the 2011 map drawers started on the east side of the county, which is represented by four Anglo males. This side of Harris County had the lowest growth rate in the county – about 10 percent compared to over 22 percent elsewhere – so it would seem logical that if a district was to be deleted, it would come from this part of the county.

But that did not happen. Instead the H283 map pushes the four eastside Anglo voter controlled representative districts west, starting with **District 129**, which adds racially mixed, heavily populated precincts like 842 (7,452 people, 50.7% Hispanic, 16.5% black, 23.9% Anglo) and 654 (10,617 people, 43.7% Hispanic, 12.7% black, 26.5% Anglo), that both

losing non-Hispanic whites and gaining protected minorities, to make up the population deficit of the existing district. And by bringing these increasingly minority precincts into a district where the core constituency consists of Anglos with a strong history of opposing the General Election candidates supported by Latinos and blacks, this map effectively denies the protected minorities in these mixed areas where they constitute a large and increasing majority, the opportunity to elect candidates of their choice.

District 144 is just north of 129, and the H283 map makers faced a different challenge here. This district, when drawn in 2001 was a majority Anglo district (52.5 Anglo population, 57.3 Anglo voting age population). However, after 2000 white flight and Latino growth made this a majority Hispanic district by 2010 (56.0% in population, 50.3% in VAP), while the Anglo percentage dropped to 30.7% with a VAP of 36.3%. In the last presidential election, this district came within 902 votes out of 39,058 of electing a Texas House candidate supported by the great majority of Hispanic and black voters in the area.

With no change in population trends, and a high turnout presidential election set for 2012, 133 – if not sacrificed to get from 25 to 24 county-wide – presented a great new opportunity district for Hispanic voters. Instead, it was jiggered around to shore up a shaky Anglo incumbent at the expense of minority – mostly Latino – voters in east Harris County. This was done in three ways. First, three predominately Anglo precincts (088, 290, 718) with a vote history of opposing minority-supported House candidates were added to the district from District 129. Then, seven mixed-race majority precincts and one majority black precinct were deleted; areas that were increasingly voting against the Anglo-supported candidates in General Elections. The sizeable population deficit was then made up by running the reshaped district north of the Houston Ship Channel to pick up sizeable, mostly Hispanic areas but not in sufficient voter numbers to threaten the Anglo incumbent in 2012.

District 128 is based in Deer Park and Baytown, and the Anglo incumbent is not endangered as his counterpart in District 144, but the Anglo population and VAP did drop sharply from 2000 to 2010 (61.3% to 49.5 in population, 65.7% to 54.8% in VAP) and thus some shoring up was needed to make sure the existing district did not become an opportunity district for minorities over the course of the decade. That was done by adding five heavily Anglo precincts from District 127 – precincts that have overwhelming voted against candidates supported by the protected minorities in Harris County.

After shedding some surplus Anglos on its east side not needed to keep **District 127** a very safe Anglo-dominated electoral unit, the resulting population deficit could be solved by pushing west into the Spring area and taking in several mixed races precincts like 599 (See Table 7) that are very high-performing minority areas, and will become even more so over the next ten years. By annexing these black and Hispanic voters in District 127, they were now rendered ineffective by combining them with Kingwood/Atascosita voters. The latter have both very high turnout rates, and extremely high racial/ethnic polarization scores.

In sum, although eastern Harris County has the lowest population growth of any portion of the county, a declining number of Anglo residents, and fast growing, mostly Latino minorities, H283 protected all four incumbent white Republican House members. But that required clear retrogression in District 144, where the Hispanic population percentage was reduced from 56.0 to 54.6, and the VAP from 50.3 to 48.5, while at the same time reducing the respective black population and VAP 2.6%. The east county redistricting was also a key part of the

overall dilution of both the black and Hispanic vote in the county, by combining high performance minority precincts like 536 on the south side and 599 on the north side with very high performance, polarized Anglo voters in Clear Lake and Kingwood/Atascosita.

(3) Table 8 showed continued remarkable Hispanic growth in Harris County, with 80% of the net gain of 691,881 population being Latino. And yet H283 does not increase Hispanic opportunities at all. Rather, as with District 144 there is retrogression. How was this done? The principal device was to set an artificially high standard to establish what could be an effective minority opportunity district. That standard was such districts to be effective and protected by the VRA, needed to have at least 50% of their registered, non-suspense voters be Spanish-surname. By drawing Hispanic districts based on this arbitrary standard – since the state has produced no compelling evidence that such a percentage is needed in counties like Harris to protect Latino voters' opportunities to elect candidates of their choice, the map drawers are able to pack large Hispanic majorities into just four of 24 districts (the 140th, the 143rd, the 145th, and the 148th). With this map, that leaves the Hispanic population of 41%, and VAP of 36.7% with effective opportunities to elect a candidate of their choice in 16.7%, and only one other district – the 137th – where they can be an effective part of a coalition district.

I have opined that the 50% SSRV standard is arbitrary and unneeded. Evidence of the latter is provided by the history of existing **District 148**, represented by Jessica Farrar. The present district is a majority Hispanic district in population (59.3%) and VAP (53.7%), yet **District 148 has a Spanish-surname, non-suspense voter registration of 40.0%**. Despite falling ten points below what the state contends is needed to be an effective Hispanic district, Representative Farrar's district has been both an effective district for her personally, and for other Hispanic candidates like Rick Noriega (U.S. Senate 2008) and Linda Chavez-Thompson (Lt. Governor 2010). Despite that reality, H283 packs an additional SSRV ten percent into the district, when clearly such augmentation is not needed for Hispanic voters to have the opportunity to elect candidates of their choice.

Elsewhere across the county, H283 either packs Hispanic voters into the six effective African American districts in Harris County, or, more commonly, parcels them out into Districts where high-turnout, polarized Anglos effectively dilute their ballots. The result: 41% of the population has an impact in just five of 24 districts. And, I might add, two of these districts, 145 and 148, would make Governor Gerry proud. I particularly like the 3 block wide strip that runs through downtown Houston to connect the northeastern and southeastern parts of 145.

(4) The pattern with black districts in Harris County is consistent with the treatment of Hispanic voters. Pack as many into the six existing protected districts (**131, 138, 141, 142, 146, 147**) as possible, although that is getting harder to do with the declining populations in the old inner-city wards. Then use as many mixed racial and ethnic precincts as possible to fill out the needed population, dismantling effective or potential coalition districts along the way. That will produce six districts that certainly give black voters the opportunity to elect candidates of their choice, but the way the districts are constructed robs blacks who live in many mixed neighborhoods of the chance to elect persons who share their political priorities.

With black districts, the state seems to be setting the bar at 40% or more VAP. That might have been necessary 20 years ago, but in Harris County today, it is almost always overkill.

From my observation of Harris County elections, any district that is more than 35% African American VAP has always afforded black voters the opportunity to elect candidates of their choice (Sylvester Turner in District 139 in 1988 is a good example). It might be possible to deliberately draw a 35% black district that would not be an effective opportunity district for African Americans by, say, combining Kingwood and northeast Houston in the same electoral unit, but nothing like this has been done in the Houston area in the last 30 years.

(5) I have said the key to the 2011 redistricting for protected minorities in Texas is how the mixed racial/ethnic neighborhood lines are drawn. This is true because a smaller and smaller percentage of black and Hispanic voters live in highly segregated, older neighborhoods today. That is true across America and is certainly true in urban Texas. This great 21st century Hispanic and black migration from segregated inner-city areas to mixed suburbs is easily understandable in terms of better schools, housing opportunities, access to the many jobs outside central cities and so forth. The question before us in 2011 is, when minority voters move into suburban America, do they effectively lose the protection of the Voting Rights Act? There is no evidence that the political values or voting patterns of African Americans changes when they move out of central cities, and little on that subject with respect to Hispanics.

After 2001, we conducted a natural experiment in Texas that was certainly not planned by the folks who drew the House plan that year. They were interested, like their counterparts this year, in drawing a maximum number of Republican districts, and that meant packing and cracking minority voters in urban Texas to minimize their influence.

But in crafting lines to produce as many Anglo Republican seats as possible, things got stretched a little thin in a dozen or so suburban districts across the state that experienced rapid minority growth. Over the course of the decade, particularly in high-turnout presidential elections, minority voters had the opportunity to elect candidates of their choice, which were different from those the map-drawers had in mind.

The Alief ISD and surrounding areas in Harris County is a good place to observe this pattern. The 2001 map, Plan H100, carved up most of the area into three districts (**149, 133, and 137**). The first two were expected to be safe Anglo Republican districts based on recent electoral performance, and with the **137th** more competitive, with a more highly registered Anglo minority expected to dominate a much larger but low registration/low turnout mix of black, Hispanic, and Asian voters. The reverse happened in 2002 when Representative Scott Hochberg, drawn out of his old district, moved into 137 and was able to pull together a coalition of mostly minority voters that elected him that November and have continued to vote for him since. Mr. Hochberg, who is Jewish, has clearly been the candidate of choice for the sizeable protected minorities in District 135 over the last five elections.

District 149 is just west of 137 in southwest Houston. It was represented in the 1970s and 1980s by Talmadge Heflin, a powerful member of the Appropriations Committee. Heflin OKed the lines for his new district in 2001, but was likely surprised the next year when a young Vietnamese former priest, Andrew Tran, ran an unfunded race against him in the General Election and got 44.5% of the vote. Two years later, Hubert Vo, a Vietnamese business owner ran in the General Election and defeated Mr. Heflin with 50.004 percent of the two-party vote. Representative Vo was reelected in 2006, 2008, and 2010 with a coalition of Vietnamese voters, black voters, and Hispanic voters. That is a potent coalition in this very racial and ethnically mixed part of Houston.

District 133 was given a larger Anglo base vote in 2001 than 137 or 149, and seemed safe for Anglo Republicans. But the district experienced very rapid minority growth coupled with Anglo decline, and was competitive enough that a serious Democratic candidate, Kristi Thibaut, challenged for an open seat in 2006. She lost to Anglo Republican Jim Murphy but got 43% of the two-party vote. Thibaut ran again in 2008. With continued minority growth and very high black turnout, Ms. Thibaut won with 50.5% of the two-party vote, showing that in a high turnout presidential year, this could be an opportunity for minority voters to elect a candidate of their choice with the backing of a diverse minority coalition. The Tea Party tsunami swept Representative Thibaut out in 2010, but with a presidential contest in 2012 assuring much higher minority turnout, the voting precincts in the district will likely show a close partisan division.

What did H283 do to these coalition districts in southwest Houston? The plan pulled as many heavily minority precincts as possible into a new 137th district, that will assuredly continue as an effective minority coalition district. District 133 was drastically altered by removal of heavily minority precincts, and the addition to high turnout/high polarized Anglo precincts. And District 149? It was wiped out and moved to Williamson County. So southwest Harris County, which had robust overall growth with great racial/ethnic diversity, lost the 25th district, while east Harris County, with anemic growth, kept its Anglo-dominated districts. The demise of District 149 in Harris County is a good indicator of what happened to protected minority voters in mixed neighborhoods. Basically, they got railroaded—all the way to Georgetown, Texas.

In summary, I believe the evidence shows it is quite possible to create effective minority coalition districts in Harris County. The 2001 Texas map-drawers showed us how to do it, although that was certainly not their intention. The 2011 map-drawers are out to rectify that error by packing and cracking these populous and growing mixed minority neighborhoods. As many as possible are shifted in districts where the black and Hispanic combined population exceeds 80 percent, on average, producing overwhelmingly Democratic majorities because of the sharp racial/ethnic polarization in Texas. The large remaining racially and ethnically mixed areas are then carefully apportioned into districts dominated by high-turnout, polarized Anglos.

Plan H283 and Dallas County

As Table 8 on the following page shows, population growth in Dallas County slowed markedly after 2000, mostly because of massive migration of Anglos, whose population fell from 983,693 to 784,693 over the 10 year period. Black growth continued, and the African American population share county-wide rose from 20.5 to 22.5 percent. But Hispanic growth far outpaced this, with a gain of 243,211 people. In 2000, Anglos were a plurality of the county population with 44.3%. By 2010, they had fallen to second at 33.1%, with Hispanics now the largest population group in the county at 38.3. Dallas County has changed a bit since J.R. Ewing was scheming down on the ranch.

The slow growth reduced Dallas County's delegation from 16 in 2001, to 14 in 2011. Given the overall nature of growth we have noted, one might naively expect that protected minorities would do pretty well in Dallas County since they were so many more black and Latino

residents and so many fewer Anglos. That is not the case with H283, which does less than nothing to improve electoral opportunities for minorities in the county,

Table 8: Population Change in Dallas County: 1990 to 2010

	<u>1990</u>	<u>Population</u> <u>2000</u>	<u>2010</u>	<u>Change</u> <u>2000 – 2010</u>
Non-Hispanic Whites	1,115,096 60.2%	983,307 44.3%	784,693 33.1%	-198,614 -10.2%
Hispanics.....	315,630 17.0%	662,729 29.9%	905,940 38.3%	+243,211 +8.4%
Non-Hispanic Blacks	362,130 19.5%	455,278 20.5%	533,018 22.5%	+77,740 +2.0%
Asian/Other.....	59,954 3.2%	117,575 5.3%	144,488 6.1%	+26,913 +0.8%
TOTAL	1,852,810	2,218,899	2,368,139	+149,240

Source: U.S. Census Bureau.

Instead of crafting a new map that reflects the fact that only a third of the county's population was Anglo in 2010, a decline that will almost certainly continue given the long-term demographics of the area,²⁷ the map-makers have tried to lock in for the next ten years an 8 Anglo, 6 non-Anglo distribution of voter control. Particularly notable is the failure to improve opportunities for Hispanic residents of the county, who will account for over 40 percent of the population by 2012, but Hispanic voters will only be effective in electing representatives of their choice in two House districts, or 14 percent of the delegation.

Not only have black and Hispanic voters seen no improvement, H283 significantly reduces their electoral impact in Dallas County compared to the existing map. How is that? As was the case in Harris County, the Anglo controlled 2001 redistricting inadvertently created a number of mixed racial/ethnic districts in Dallas County over the decade. Most minority voters were packed into six House districts – 100 (black), 103 and 104 (Hispanic), 109, 110, 111 (black), but five new districts were drawn in neighborhoods that were in transition, with minorities moving in and Anglos moving out. Table 10 summarizes the rapid decline in the Anglo population share in Districts 101, 102, 105, 106, and 107 between the 2000 and 2010 censuses. As protected minorities moved in, these non-competitive districts represented by Anglo Republicans gradually came into play. In 2002, only one Republican nominee was opposed in these districts, and he won with 58.4% of the two-party vote. In 2004, a presidential year with higher minority participation, three districts were contested, and the mean Republican vote in these dropped to 55.0%. In 2006, four of five seats were contested,

²⁷ In Anglos accounted for 70.2% of Dallas County's population. This fell to 60.2% in 1990, 44.3% in 2000, and 33.1 in 2010.

and the mean Anglo GOP nominees averaged 52.3%, with one seat lost to a candidate supported by a coalition of protected minority voters, and upscale inner-city Anglos. In 2008, with minority turnout at record levels, Anglo Republicans lost four of the five districts, and prevailed in the fifth by 20 votes out of 39,692, with the mean Anglo Republican nominee percentage falling to 47.6. The 2010 General Election saw Republicans recapture these five seats, but only by a margin of 52.6 percent in a low minority turnout midterm election.

The recent history of these Dallas House districts shows the ability of African American and Hispanic voters to join with non-polarized urban Anglos and create competitive coalitions. This is especially true in presidential election years, and with such scheduled for 2012, the Dallas House voting patterns suggested there were real opportunities for minority voters to elect candidates of their choice in mixed racial and ethnic neighborhoods. Plan H283 takes that opportunity off the table. Two of the mixed districts were eliminated and moved to Tarrant and Denton Counties. The remaining three could easily have been consolidated to create effective minority coalition districts, but as in Harris County, Plan H283 assigns as many minority residents as possible to the six protected minority districts created by the 2001 map, and moves the remaining black and Hispanic voters into districts that have high turnout Anglos with a recent history of polarized voting. The overall result – black and Hispanic voters in Dallas County are left in far worse shape than was the case under the 2001 map.

Table 10: Partisan Shifts in Five Mixed Racial/Ethnic State House Districts in Dallas and Tarrant Counties: 2002 – 2010

Dallas County

Dist.	<u>Anglo Pop. %</u>			<u>Republican Candidate Share of Two-Party Vote</u>				
	2000	2010	Change	2002	2004	2006	2008	2010
101	64.0	40.3	-23.7	NC	NC	NC	49.4	51.8
102	47.5	37.8	- 9.7	NC	53.2	53.1	47.0	54.6
105	48.9	31.1	-17.8	NC	59.2	57.2	50.02	53.5
106	48.1	30.0	-18.1	NC	52.6	50.6	43.6	50.4
107	60.0	48.7	-11.3	58.4	NC	48.2	48.2	52.5
Mean in Contested Dallas Races				58.4	55.0	52.3	47.6	52.6

Tarrant County

093	47.9	33.2	-14.7	56.6	56.1	48.6	41.6	50.9
096	68.6	49.0	-19.6	60.0	60.3	54.2	48.6	52.4
Mean in Contested Tarrant Races				58.3	58.2	51.4	45.1	51.7

Plan H283 and Tarrant County

Given the patterns in Harris and Dallas County it is hardly surprising that the two districts in Tarrant County that became competitive under the 2001 legislative map were dismembered by H283, to the detriment of the growing minority voters in Districts 93 and 96. Table 10 shows the same population shift and political shift, as Anglos leave the districts, minority voters make the districts competitive and, in presidential election years, provided the opportunity to elect candidates.

The carving up of District 93 by H283 produces one of the stellar gerrymanders of 2011. Populous minority neighborhoods in a long strip in east Tarrant County are connected to very high turnout Anglo precincts in north county by a very narrow corridor north of downtown Fort Worth. The new district is majority Anglo in population (53.8%) and VAP (57.8%) in comparison to the existing District 93 which was 33.2 Anglo in population and 37.9% in VAP. District 96 is much more compact, but H283 restores an Anglo population majority of 57.8% and a VAP of 62.0%. In both cases, protected minorities have been removed from competitive districts trending strongly toward candidates they have supported, and placed in majority Anglo districts with Anglos who have a history of polarized voting.

Plan H283 and El Paso

We have noted that the H283 map-drawers have made a concerted effort across the state to pack as many minority voters as possible into as small a number of districts as possible. One of the mechanisms utilized in this process has been a set a standard of getting 50% or more of the non-suspense registered voters to be Spanish surname. This is almost always overkill in urban areas like Houston and Dallas-Fort Worth where it is relatively easy to craft effective minority districts that give Hispanic voters the opportunity to elect candidates of their choice *if* the map-drawers avoid building districts with high-turnout African Americans who would likely prevail in Democratic Primaries, and similarly avoid putting Latino voters into districts with high-turnout Anglos who oppose candidates favored by the protected minority.

Whatever one thinks of the 50% Spanish Surname registered voter standard, we would expect to find it honored in El Paso County, which has the largest SSRV percentage of any metropolitan county in Texas. But that is not the case with District 78, where the SSRV is 47.1% in H283. Given that adjacent Districts 77 and 79 have SSRV percentages of 66.4% and 69.3%, it would have been very easy to make minor adjustments and reach the 50 percent standard H283 claims to strive for where possible. Why the failure in this case? Well, there is an Anglo Republican incumbent in District 78, so in this case, maybe 50 percent is not such a great idea.

IV. Conclusion

In this report I have focused on several factors that are, in my opinion, relevant to the question before this federal court as to whether Plan H283 should be sustained and used for coming elections in Texas.

I have first made the case that Texas has a long and sad tradition of discriminating against its African American and Hispanic residents. One place this has been most manifest is the electoral process. Because of that discriminatory pattern, Congresswoman Barbara Jordan led a successful fight 36 years ago to bring Texas under the full provisions of the Voting Rights Act. That inclusion, coupled with growing electoral power of the protected minorities, resulted in significant progress for minority voters since the 1970s. Many more blacks and Latinos hold public office than was the case 20 years ago, and a good deal of that is accounted for by the VRA because majority Anglos have continued to use a variety of means to hold unto power in the state.

The significant though incomplete progress blacks and Latinos have made in Texas is threatened by disturbing national trends that have been magnified in the Lone Star State. The electoral coalitions of the dominant national parties have shifted very far away from the old New Deal alignment that defined partisan attachments for the latter two-thirds of the 20th century. In the 21st century we have seen a great “sorting out” into very different party coalitions. White southerners and ethnic, blue collar whites, both critical bases of the old Democratic coalition have moved toward the Republicans. Older whites have become more supportive of the GOP, while younger voters trend more Democratic. Politics has become more ideological, with the Republican Party now clearly a party of conservative and very conservative voters. Democrats are largely a party of moderates and liberals.

The new party alignment has a strong racial/ethnic component. Whites are now much likely to align with the Republican Party while minority voters have become more supportive of Democrats. The election of President Obama in 2008 and the emergence of the Tea Party in 2009 have widened and sharpened this racial/ethnic gap. An obvious consequence is more racial/ethnic vote polarization.

These trends are especially evident in Texas. Texas whites are more conservative and are considerably more Republican than is the case in the nation. Blacks and Hispanics are both more numerous here than in the country, and more supportive of Democratic nominees. This realignment has worked well for the Republicans in Texas who have control of all levers of power in Austin and hold both U.S. Senate seats and a 23 – 9 advantage in the state’s congressional delegation. But that power is threatened by the rapid growth of minority populations and the slower, but sure growth, of minority voting power. The Anglo population is approaching stability, and is expected to decline in absolute numbers after 2020 while non-Anglo growth is almost certain to continue.

Many of the electoral means the Anglo Democrats used for much of the 20th century (poll taxes, at-large elections, etc.) have now been invalidated, but one great power remains for a majority party – the ability to craft new political districts after a census. Texas has a tradition of partisan gerrymanders, and Republicans have quickly mastered the art since taking power in the 1990s. But partisan gerrymandering in Texas is complicated today because the partisan political polarization along racial/ethnic lines creates the very real possibility that the

overwhelmingly Anglo Republican Party will use its power in the redistricting process to violate the voting rights of protected minorities.

From reviewing several features of the 2011 H283, I believe that the plan adopted does in fact violate Sections Five and Two of the Voting Rights Act. There is clear retrogression in case like District 144 in Harris County, and the dismantling of an effective Vietnamese/black/Hispanic dominated district (149) in the same county. And the packing of minority voters across the state far in excess of the numbers needed to elect candidates of their choice, combined with moving the fast-growing suburban minorities into districts dominated by high-turnout Anglos strongly polarized against minority voters effectively dilutes the black and Hispanic voters of Texas.

I urge the court to set aside the H283 because it clearly violates the Voting Rights Act, and to allow the substitution of a new state map that represents the Texas electorate of 2011, not 1991.